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Supreme Court of the United States

OCTOBER TERM, 1952

No. 517

OLIVE B. BARROWS, RICHARD PIKAAR, and M. M. O'GARA, *Petitioners,*

vs.

LEOLA JACKSON, *Respondent.*

On Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District

BRIEF OF

AMERICAN VETERANS COMMITTEE, INC. (AVC)

Amicus Curiae

PHINEAS INDRITZ,
National Counsel,
American Veterans Committee.

April 20, 1953.
Washington, D. C.

INDEX

	Page
The issue in this case	1
Interest of the American Veterans Committee	4
I. Judicial enforcement of a racially restrictive covenant, whether by a money judgment or otherwise, is governmental action in violation of the Fourteenth Amendment	4
II. There is no merit in the Petitioners' efforts to distinguish this case from this Court's earlier decisions on racial property restrictions	6
A. The prohibition against judicial enforcement of racial property restrictions, made explicit by this Court from 1917 to 1948, is not limited to injunction suits	6
B. This Court has never ruled that a racially restrictive covenant is "valid" for purposes of judicial enforcement through money judgments, or for any purpose other than private and voluntary adherence to its terms unsupported by any governmental action	8
C. State courts do not have greater power to enforce racial covenants in suits against white sellers than in suits against colored purchasers	10
D. The Respondent's signature of the covenant in 1944 does not take this case outside the scope of this Court's prior decisions holding such covenants judicially unenforceable	10
III. Enforcing the covenant by the imposition of money damages on the white seller will affect not only the pocketbook of the seller but the fundamental civil rights of all potential purchasers against whom the covenant is directed	12
IV. The judicial rule of law sought by the Petitioners would unconstitutionally lend government aid to private prejudice	15

TABLE OF AUTHORITIES

CASES:

	Page
Amer. v. Superior Court of California, 334 U. S. 813 (1948)	1
Bément v. National Harrow Co., 186 U. S. 70 (1902)	12
Bridges v. California 312 U. S. 252 (1941)	5
Buchanan v. Warley, 245 U. S. 60 (1917)	4, 5, 10, 13
City of Richmond v. Deans, 281 U. S. 704 (1930)	4, 13
Continental Wall Paper Co. v. Louis Voight & Sons, Inc., 212 U. S. 227 (1909)	12
Corrigan v. Buckley, 271 U. S. 323 (1926)	6, 8
Edward Katzinger Co. v. Chicago Metallic Mfg. Co., 329 U. S. 394 (1947)	12
Harmon v. Tyler, 273 U. S. 668 (1927)	4, 5, 10, 13
Hurd v. Hodge, 334 U. S. 24 (1948)	1, 6, 7, 8, 10, 11, 13
Kim v. Superior Court of California, 334 U. S. 813 (1948)	1
MacGregor v. Westinghouse Electric Mfg. Co., 329 U. S. 402 (1947)	12
McGhee v. Sipes, 334 U. S. 1 (1948)	1
McMullen v. Hoffman, 174 U. S. 639 (1899)	12
Oscanyon v. Arms Co., 103 U. S. 261 (1880)	12
Railway Mail Association v. Corsi, 326 U. S. 88 (1945)	16
Shelley v. Kraemer, 334 U. S. 1 (1948)	1, 3, 5, 6, 7, 8, 10, 11, 13
Steele v. Louisville & N. R. Co., 323 U. S. 192 (1944)	14
Truax v. Raich, 239 U. S. 33 (1915)	14
Trustee of Monroe Avenue Church of Christ v. Perkins, 334 U. S. 813 (1948)	1
United States v. Williams, 341 U. S. 70 (1951)	9
Urciolo v. Hodge, 334 U. S. 24 (1948)	1, 6, 7, 10

MISCELLANEOUS:

Brief for Petitioners	6, 7
Brief of O'Fallon Park Protective Association, et al.	13
Consolidated Brief for Petitioners in *Hurd v. Hodge*, 334 U. S. 24 (1948). (Nos. 290-291, Oct. Term, 1947)	13
Federal Housing Administration Regulations in title 24, C. F. R. (1952 Supp.)	9, 11
14 Federal Register 7579, 7588 (Dec. 26, 1949)	11
Federal Reserve Bulletin, p. 275 (March 1953)	11
Marcus, Philip, "Civil Rights and the Anti-Trust Laws," 18 *Univ. Chi. L. Rev.* 171 (1951)	9
Morgan, Belden, "Values in Transition Areas: Some New Concepts," *The Review of the Society of Residential Appraisers*, 5-10 (March 1952)	13
Revised Statutes, sec. 1978 (8 U. S. C. sec. 42)	2, 8
Veterans Administration Regulations in title 38, C. F. R. (1951 Supp.)	9, 11
Washington, George, Letter of August 1790, *To the Hebrew Congregation in Newport, Rhode Island*, 30 Washington's Letter Books 19	16

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The issue in this case. This case is an attempt to undermine the rulings by this Court in 1948 that racially restrictive covenants may not be judicially enforced. *Shelley* v. *Kraemer,* and *McGhee* v. *Sipes,* 334 U. S. 1; *Hurd* v. *Hodge,* and *Urciolo* v. *Hodge,* 334 U. S. 24; *Trustees of the Monroe Avenue Church of Christ* v. *Perkins,* 334 U. S. 813; *Amer* v. *Superior Court of California,* 334 U. S. 813; *Kim* v. *Superior Court of California,* 334 U. S. 813. All of these cases arose because some white persons had sold houses to persons of Negro, Oriental or other non-Caucasian ancestry, despite the terms of neighborhood

agreements which forbade the sale of the land to, or its occupancy and use by, persons of such proscribed ancestry. When the neighboring white persons, having no interest in that land except their alleged interest in the exclusion of non-Caucasians from the community, found that they could not prevent the transaction by their own efforts, they sought court injunctions to forbid the white sellers from selling to the non-white purchasers, to divest these purchasers of title to their homes, and to forbid the purchasers from occupying and using the homes they bought from the willing white sellers.

In decisions which are landmarks on the road toward Equal Justice under Law, this Court, after the most thorough canvassing of the legal issues and the factual settings, held that racially restrictive covenants are judicially unenforceable. The decisions in the cases arising from States rested on the concept that judicial enforcement of such covenants was State action which violated the Equal Protection clause of the Fourteenth Amendment. In the cases arising from federal territory (the District of Columbia in those instances), this Court ruled that federal courts are precluded from enforcing such covenants, not only by an Act of Congress (Sec. 1978, Rev. Stat., 8 U.S.C. 42), but also because it would be inconsistent with the public policy of the United States for a federal court to enforce a covenant the enforcement of which by a State court would violate the guarantee of the equal protection of the laws.

This case, like the 1948 cases, involves a racial covenant the sole purpose of which is to bar from the neighborhood persons of certain racial ancestry. The covenant, signed in October 1944 by the Respondent and two of the three Petitioners, provided that no part of the land described therein "should ever at any time be used or occupied by any person or persons not wholly of the white or Caucasian race" except "as domestic servants or other employees"; that the covenant was "to be a covenant running with the

land"; that each signer would incorporate this restriction in future conveyances of the land; and that if the land "should ever at any time be used or occupied" by such proscribed persons, "then in that event the covenantor who covenanted as to that lot, or his heirs, executors, administrators, successors, or assigns, would immediately become liable to those covenantors, their heirs, executors, administrators, successors, or assigns, whose lots were not so occupied for all damages which they may have suffered by reason of the breach thereof" (R. 3). As Mr. Chief Justice Vinson pointed out for the unanimous Court in the *Shelley* decision (at p. 10): "It should be observed that these covenants do not seek to proscribe any particular use of the affected properties. Use of the properties for residential occupancy, as such, is not forbidden. The restrictions of these agreements, rather, are directed toward a designated class of persons and seek to determine who may and who may not own or make use of the properties for residential purposes. The excluded class is defined wholly in terms of race or color; 'simply that and nothing more.'"

Within six years after she signed the covenant, the Respondent had changed her mind. In February 1950 she sold her house without inserting the covenant restriction in the deed of conveyance, and in September 1950 Negroes moved in and occupied the house (R. 4). The Petitioners in this case, finding themselves barred by the *Shelley* case from using governmental power directly against the proscribed non-Caucasians, seek to accomplish the same result indirectly by using governmental power to enforce the covenant through the imposition of money judgments against the white seller. It is obvious that the imposition, or the threat of imposition, of such judgments would discourage or effectively prohibit sales to Negroes and members of other proscribed groups. See Part III of this Brief (pp. 12-15).

The issue here is whether the courts of California correctly ruled that they may not constitutionally exercise

governmental power to enforce a racial covenant by imposing money damages on a person who once had agreed to such restrictions but later changed his mind and failed to comply with the restrictions.

Interest of the American Veterans Committee. The American Veterans Committee, Inc (AVC) is a nation-wide organization of veterans who served honorably in the Armed Forces of the United States during World Wars I and II, and the Korean Conflict, and are now associated to promote the democratic principles for which we fought. We believe that racial discrimination is inconsistent with our Nation's basic principles, that it is harmful to our national welfare at home, that it adversely affects our relations with the peoples of the world, and that it is a potential catalyst for future military hostility against the United States. We therefore urged this Court, in 1948, to refuse judicial enforcement of racially restrictive covenants. 334 U. S. at 3 and 25. We think that the attempt in this case to enforce such covenants through judicial action imposing money judgments is of a piece with the effort made in 1948 to enforce them by court injunctions, and should similarly be rejected as alien to the Constitutional principles which govern this Nation. The honor and sanctity of the Constitutional principle of Equal Protection of the Laws is not less "at law" than "in equity."

I. Judicial enforcement of a racially restrictive covenant, whether by a money judgment or otherwise, is governmental action in violation of the Fourteenth Amendment.

In *Buchanan* v. *Warley*, 245 U. S. 60 (1917); *Harmon* v. *Tyler*, 273 U. S. 668 (1927); and *City of Richmond* v. *Deans*, 281 U. S. 704 (1930), this Court held invalid, under the Fourteenth Amendment to the Federal Constitution, any legislation which restricted the sale of land to, and its occupancy by, any person, solely on the basis of race or

color. Two of these cases (*Buchanan* and *Harmon*) involved suits challenging "the rights of white sellers to dispose of their properties free from restrictions as to potential purchasers based on considerations of race or color." *Shelley* at 12. These cases decided that no court could constitutionally enforce such restrictions against the white seller even though the restrictions were "encased in the armor wrought by prior legislative deliberation." *Bridges* v. *California*, 312 U. S. 252, 261 (1941).

In 1948, this Court established beyond cavil that judicial action is State action subject to the restraints of the Fourteenth Amendment; that judicial enforcement of restrictions which discriminate against persons because of their race violates that Amendment, even though "the particular patterns of discrimination and the areas in which the restrictions are to operate, are determined, in the first instance, by the terms of agreements among private individuals" (*Shelley* at 13); and that property owners who are parties to such agreements are not denied equal protection of the laws when they are denied "access to the courts to enforce the terms of restrictive covenants and to assert property rights which the state courts have held to be created by such agreements" but the enforcement of which would violate constitutional rights of other persons. *Shelley* at 22.

A court order imposing a money judgment on a white seller, for selling his land to, or permitting its occupancy by, a person proscribed in a racially restrictive covenant, is obviously judicial enforcement of the covenant. It would destroy the seller's constitutional right to dispose of his property "free from restrictions as to potential purchasers based on considerations of race or color." Under this Court's decisions holding that such covenants are not judicially enforceable, such a court order would be unconstitutional. The decision of the court below should therefore be affirmed.

II. There is no merit in the Petitioners' efforts to distinguish this case from this Court's earlier decisions on racial property restrictions.

A. The prohibition against judicial enforcement of racial property restrictions, made explicit by this Court from 1917 to 1948, is not limited to injunction suits.

The Petitioners do not challenge the established doctrine that no legislature could constitutionally impose racial restrictions dealing with the sale of property, whether those restrictions are to be enforced by injunction, assessment of money damages, or any other means.

Nor do the Petitioners challenge the holdings of the *Shelley* and *Hurd* cases insofar as those cases refused to grant injunctive relief based on the privately created racial covenants. Although much of the Petitioners' Brief deals with the argument that the Respondent had "consented" to the covenant restrictions (see Part II, D of this Brief), they do not really rely on that argument. That argument, if it had merit, would apply with equal logic to *injunction* suits against white sellers who, like Mrs. Corrigan in *Corrigan* v. *Buckley*, 271 U. S. 323 (1926), had been signatories to the covenant. However, the Petitioners recognize the hopelessness of trying to undermine the 1948 decisions insofar as concerns suits to enjoin white sellers from selling land to colored purchasers,[1] and therefore they concede that since enforcement of a racial covenant by injunction against a white seller would deprive the Negro of his right to buy, such covenant could not constitutionally be enforced by injunction against a white seller even if he had signed the covenant. See *Brief for Petitioners*, pp. 39-40. What the Petitioners say, then, is that the 1948 decisions, since they involved injunctions, must be limited solely to injunction cases and do not apply to a suit for money judgment.

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[1] In the 1948 case of *Urciolo* v. *Hodge*, this Court invalidated the injunction against Urciolo, the white seller.

But the crucial point in the 1948 decisions was that the aid of State power was being sought to achieve a discriminatory purpose which could not be achieved solely by private and "voluntary adherence" to the terms of the covenant. Here, too, the Petitioners could not, by "voluntary adherence" to the terms of the covenant, achieve their discriminatory purpose to keep Negroes out. Here they seek "more," namely, to have the State courts exert governmental power against the person whose sale may have enabled the Negroes to move into the community. They frankly state that what they seek is "enforcement" of the racial covenant. *Brief for Petitioners*, pp. 21, 24, 41, 42, 45.

Enforcement of the racial covenant restriction, however, is precisely what this Court in 1948 said was unconstitutional for a State court to do. This Court did not limit its decisions to suits for injunction, or recognize any constitutional difference between injunction suits and suits for money judgment or other types of suits. Instead, this Court throughout its opinions uniformly and repeatedly emphasized that it was dealing with "court enforcement," "judicial enforcement," "governmental action," "State authority," "action of State courts," "State action," "State power," "enforcement by State courts," "power of government," "exertions of State power in all forms." It distinguished such governmental enforcement from effectuation of the agreements "by voluntary adherence to their terms." *Shelley* at 13; *Hurd* at 31. "These are not cases, as has been suggested, in which the States have merely abstained from action, leaving private individuals free to impose such discriminations as they see fit. Rather, these are cases in which the States have made available to such individuals the full coercive power of government to deny to petitioners, on the grounds of race or color, the enjoyment of property rights . . ." *Shelley* at 19. Nor can it be said that this Court overlooked the possibility of a suit for money judgment, since the covenant in the companion *Hurd* and *Urciolo* cases, quoted at p. 26 thereof, for-

bade Negro occupancy of the land "under a penalty of Two Thousand Dollars ($2,000)."

The 1948 decisions simply cannot be read, as the Petitioners here contend, as applying solely to injunction suits.

B. This Court has never ruled that a racially restrictive covenant is "valid" for purposes of judicial enforcement through money judgments, or for any purpose other than private and voluntary adherence to its terms unsupported by any governmental action.

Equally erroneous is the Petitioner's argument that this Court has held the covenants themselves to be "valid contracts" and has therefore implicitly recognized their enforceability in a suit based on the "valid contract." Neither *Corrigan v. Buckley*, 271 U. S. 323 (1926) nor the 1948 Restrictive Covenant decisions stand for any such proposition.

The *Corrigan* case dealt only with the technical question of this Court's jurisdiction, arising from the fact that the pleadings in that case raised only a contention that the Constitution rendered the *covenant itself* "void". Such a contetntion could not confer on this Court jurisdiction to hear the appeal, since the Constitutional Amendments relied on apply only to governmental action and do not apply to the action of private individuals,—so long as their action remains private. And the Court specifically pointed out that neither the petition for appeal nor the assignment of error had raised the question of the validity of *judicial enforcement* of the covenant. *Corrigan* at pp. 330, 331; see also *Shelley*, p. 8. Hence the appeal was necessarily "Dismissed for want of jurisdiction." *Corrigan*, p. 332.

This Court took precisely the same view in the 1948 cases, *i.e.*: that neither the Constitution nor Sec. 1978, Rev. Stat. invalidates (outlaws, or makes unlawful) the restrictive agreements "standing alone" or "so long as the purposes of those agreements are achieved by the parties through voluntary adherence to their terms." *Shelley* at 13; *Hurd* at 31.

Thus, what this Court meant, plainly, is that the *making* or *signing* of a racially restrictive covenant and *voluntary adherence* to its terms did not violate the law, did not subject the persons who do so to punishment by fine or imprisonment or other penalty, and did not violate anyone's constitutional rights.[2]

But where there is "more"—when they seek to enforce the covenant with the power of government, expressed through its courts or other agencies—they move into conflict with the Fourteenth Amendment which prohibits State support of the racial discrimination.

As the trial court put it in this case, "a prodigious feat of legal legerdemain is required to transfer the passing observation of the Supreme Court to the effect that, so long as the parties voluntarily adhered to their agreement, no question would arise under the Fourteenth Amendment, into a holding that such a discriminatory agreement is valid." (R. 14).

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[2] Congress could, of course, enact a law forbidding the making of such agreements. See *United States* v. *Williams*, 341 U. S. 70, 72 (1951). *Compare* the following regulations of the Federal Housing Administration and the Veterans Administration prohibiting the making and recording of such racial restrictive covenants, under penalty of loss of eligibility for federal home loan insurance and guarantee:

F. H. A. regulations: 24 C. F. R. (1952 Supp.) secs. 203.19; 203.24; 203.29; 221.29; 221.37; 221.42; 232.16; 232.24(c); 232.25; 241.15; 241.23; 242.18; 242.25; 276.28a; 276.34a; 276.37a; 278.20a; 278.26a; 278.29a; 280.22b; 280.35; 280.35a; 283.22a; 283.31a; 287.27; 287.34; 288.25; 288.30; 290.8(g); 292.24; 292.38; 292.39; 294.20; 294.25; 294.33; 296.16; 296.31. See R. 56-57 for one of these regulations.

V. A. regulations: 36 C. F. R. (1951 Supp.) secs. 36.4308(e); 36.4320(h)(5); 36.4350(a)(7); 36.4515(c).

It is probable, although not yet litigated, that the making of racially restrictive covenants may also violate the Anti-Trust Laws, at least in federal areas such as the District of Columbia. See Philip Marcus, "Civil Rights and the Anti-Trust Laws," 18 *Univ. Chi. L. Rev.* 171, 208-214 (Winter 1951).

C. State courts do not have greater power to enforce racial covenants in suits against white sellers than in suits against colored purchasers.

Throughout their brief, the Petitioners try to distinguish this case from the 1948 decisions by saying that the 1948 decisions protected the right of the colored persons to buy whereas here the Petitioners are proceeding solely against the white seller who had once agreed to the covenant. But this Court, in holding that racial restrictive covenants are judicially unenforceable, did not demarcate between the white seller and the Negro purchasers.

This Court pointed out, in *Shelley* at p. 12, that both the *Buchanan* and *Harmon* cases, invalidating racial zoning laws, "involved the rights of white sellers to dispose of their properties free from restrictions as to potential purchasers based on considerations of race or color." And in *Urciolo* v. *Hodge*, the companion case to *Hurd* v. *Hodge*, this Court ruled that the restrictive covenant containing the "penalty of $2000" could not be judicially enforced against Urciolo, the white seller, for the same reasons that it could not be enforced against the colored purchasers. The color of the defendant is, clearly, constitutionally irrelevant.

D. The Respondent's signature of the covenant in 1944 does not take this case outside the scope of this Court's prior decisions holding such covenants judicially unenforceable.

The last prop upon which the Petitioners rely, then, is that the white seller in this case, by having signed the agreement in 1944, has "consented" to judicial enforcement of the covenant and the imposition of a money judgment against her and therefore the Courts of California must enforce the covenant against her.

Assuming *arguendo* that the Respondent's signature of the covenant could make it judicially enforceable against her, that portion of the covenant requiring her to incorporate the covenant restrictions into any subsequent deed of conveyance, related, in 1944, only to the exclusion of non-

Caucasians. But in December 1949, the Federal government announced regulations that the execution and recording of such racial restrictions would make the land ineligible for F. H. A. and V. A. financing. 14 F. R. 7579-82, 7588 (Dec. 20, 1949); see footnote 2, *supra*. If the Respondent, under compulsion of the covenant, had taken action contrary to these regulations, she would have been barred from selling her land to all potential purchasers, white or colored, who must use FHA or VA financing in order to purchase a home. Such a drastic restriction upon her right of access to the white market[3] she certainly never "consented" to. Hence, even under the Petitioners' theory of liability on the basis of "consent," the imposition of a money judgment for her failure to include the covenant in her 1950 deed would violate her Constitutional rights.

In any event, however, the Respondent could not bargain away the inhibition which the Fourteenth Amendment imposes, not on her, but on the courts of California. Nor does her signature to the covenant estop her from challenging the validity of judicial action enforcing the covenant against her. Even the Petitioners admit that the covenant here involved is an agreement whose enforcement by governmental power would, in the absence of the Respondent's "consent", be unconstitutional (*Shelley* at 23), and that its enforcement by Federal courts would be contrary to an Act of Congress and the public policy of this Nation (*Hurd* at 34-35).

This Court has uniformly refused to invoke any estoppel against a party to a contract who challenges the enforce-

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[3] The extent of the market from which she would be barred if she included the racial restriction in her deed is enormous. At the end of 1952, 43.6 percent ($25.4 billion) of the total mortgage debt of $58.2 billion outstanding on non-farm 1- to 4- family properties in the United States was underwritten either by the F. H. A. (18.5 percent or $10.8 billion) or the V. A. (25.1 percent or $14.6 billion). *Federal Reserve Bulletin*, page 275 (March 1953).

ability of the contract on grounds that its enforcement is against public policy or contrary to statute or the Constitution. *Continental Wall Paper Co.* v. *Louis Voight & Sons, Inc.*, 212 U. S. 227, 262 (1909); *Bement* v. *National Harrow Co.*, 186 U. S. 70, 88 (1902); *McMullen* v. *Hoffman*, 174 U. S. 639, 669 (1899); *Oscanyon* v. *Arms Co.*, 103 U. S. 261 (1880). In such cases, the courts are concerned, not with the respective "equities" of the parties as between themselves, but with the vindication of the public interest served by the challenge to the contract. Courts are not automatons blindly enforcing whatever contracts private individuals may have once agreed to. That public interest so greatly outweighs the interest of enforcing agreements between private parties that such challenge is permitted even where a defendant has specifically contracted with the plaintiff that he will not challenge that very contract. *Edward Katzinger Co.* v. *Chicago Metallic Mfg. Co.*, 329 U. S. 394 (1947); *MacGregor* v. *Westinghouse Electric Mfg. Co.*, 329 U. S. 402 (1947). If the signer of a contract is not estopped from raising statutory or public policy defenses against the enforceability of the contract, he should not be estopped from raising the infinitely more fundamental defenses based on the Federal Constitution.

III. Enforcing the covenant by the imposition of money damages on the white seller will affect not only the pocketbook of the seller but the fundamental civil rights of all potential purchasers against whom the covenant is directed.

A considerable portion of the Petitioners' argument is devoted to the proposition that enforcement of the covenant by a money judgment against the white seller would not affect the Negroes who have already moved into the house which the Respondent sold. But to disregard the effect which such judicial enforcement will have on the ability of all other Negroes (and other persons proscribed because of their race, color, or religion) to purchase or lease or occupy a house is to shut one's eyes to the facts of life.

The organized purpose to utilize the racial covenants as a substitute for the racial zoning laws which this Court invalidated in *Buchanan, Harmon* and *City of Richmond*—to utilize the device of money judgments as a substitute for the injunction procedure invalidated in *Shelley* and *Hurd*—is dramatized in this case by the *amici* Briefs filed in the names of some 64 "Protective" and "Improvement" Associations of land owners in California, Michigan, Missouri, and the District of Columbia, urging enforcement of the covenant. If this Court should now hold such covenants enforceable through the machinery of the State, Negroes and other persons of ancestry proscribed by prejudice would lose virtually all chance of purchasing hundreds of thousands of covenanted parcels of land still owned by persons who in a passing moment of prejudice or thoughtlessness, often years ago, had signed such a covenant. Despite any change in their personal beliefs resulting from education, religion or increased maturity, these owners would be deterred, by the threat of litigation itself, from making any sales to the proscribed persons. Where covenants, such as the one in this case, state no maximum amount of damages, or where the covenants specify more than a nominal sum as "liquidated damages," few sellers would want to risk the possibility of a heavy judgment imposed by biased jurors who may be imbued with the false notion that Negro occupancy causes depreciation of the real estate values of the community.[4] Indeed, the Missouri *amici* (*Brief of O'Fallon Park Protective Association, et al.*, p. 19) frankly admit: "It is true, as has been suggested, that if the States are permitted to render many

[4] See pp. 73-85, *Consolidated Brief for Petitioners* in *Hurd* v. *Hodge*, *supra*, Nos. 290-291, Oct. Term, 1947, for data, including studies by National Association of Real Estate Boards, showing that Negro occupancy does not cause depreciation of real estate values, and frequently increases such values. *Accord:* Belden Morgan, "Values in Transition Areas: Some New Concepts," *The Review of the Society of Residential Appraisers*, 5-10 (March 1952).

judgments upon proper application against one who has breached a restrictive agreement, the threat of such action may prove a deterrent to the sale of certain real property to members of a racial minority."

True, no colored person may compel a white person to sell if the white owner is unwilling to sell. But the colored purchaser does have a constitutional right to be free from the pressures imposed by State action on persons who, except for such State action, would be willing to sell to him. That right is as great as the constitutional right which an individual has in the freedom of an employer to select employees, unrestrained by arbitrary and discriminatory restrictions which are based on race or nationality and enforced by governmental power. *Truax* v. *Raich*, 239 U. S. 33, 38, 41 (1915); *Steele* v. *Louisville & N. R. Co.*, 323 U. S. 192 (1944) (discrimination through contract).

Furthermore, the necessary result of judicial enforcement by a money judgment against those white sellers who would regard the judgment as a "cost of doing business," would be an equivalent increase in the sales price which would be required from Negro purchasers, though not from white purchasers, irrespective of whether or not the particular covenant states a fixed or "liquidated" sum of "damages." Such discriminatory economic impact, resulting from the action of the State based solely on race or color, is clearly violative of the constitutional rights of the proscribed purchasers.

Even more pervasive would be the intangible support which the availability of such judgments would afford to racial residential segregation. Not only would the prestige of the courts afford legal and moral sanction to the use of governmental power to enforce such discriminatory covenants, but it would enlist as active proponents of prejudice a large number of people who at one time, even many years ago, signed such agreements either under pressure or without adequate realization of the full import of what they had signed, and have since become neutral or have changed their minds.

The evil effect which the past could have on the future is illustrated by the language of the very covenant involved in this case. It purports to impose damages on the covenantor if the land should "ever at any time" be used or occupied by "persons not wholly of the white or Caucasian race". Under California law, as interpreted by the court below (R. 32-34), the happening of the event (occupancy by persons of Negro ancestry) would, in the absence of the Constitutional protection, have subjected the Respondent to damages even though the event was occasioned by a subsequent owner, as apparently occurred in this case. Thus, if the Fourteenth Amendment did not prohibit the imposition of such damages, every white seller in Respondent's position would have to be *perpetually* on guard against occupancy "ever at any time" by persons who might be within the proscribed class. Otherwise he would be subjected to the threat and the reality of a money judgment. The covenants would thus become a form of blackmail compelling the intensification of prejudice and overt discrimination against racial and religious groups.

IV. The judicial rule of law sought by the Petitioners would unconstitutionally lend government aid to private prejudice.

Essentially, what the Petitioners seek in this case is the formulation of a judicial "rule of law" which by governmental imposition of financial punishment will deter the sales of homes to persons whom prejudiced people want to keep out of the community (except as servants). Such a judicial rule of law would establish the legality of enforced ghetto-ization of America through the use of governmental power. The evil consequences of such a rule of law have been fully demonstrated. See pp. 40-98, *Consolidated Brief for Petitioners* in *Hurd* v. *Hodge*, *supra*. Such a rule of law is no different than the legislative rule of law which this Court unanimously and repeatedly struck down in 1917,

1926 and 1930. It is as violative of constitutional rights as the judicial rule of law which this Court unanimously rejected in 1948.

The Petitioners' faint-hearted suggestion that such a rule of law is required by the Fourteenth Amendment to protect *their* rights as parties to a "contract" has been squarely repudiated by this Court (*Shelley* at 22)—such an argument, clearly, is "a distortion of the policy manifested in that amendment," which was adopted to prevent, not to compel, State action perpetuating discrimination on the basis of race or color. *Railway Mail Association* v. *Corsi*, 326 U. S. 88, 94 (1945).

Our First President delineated the standard of our government as one "which gives to bigotry no sanction, to persecution no assistance." *Letter of George Washington*, August 1790, *To the Hebrew Congregation in Newport, Rhode Island*, 30 Washington's Letter Books 19. The prohibition of the Fourteenth Amendment, in the spirit of that standard, precludes judicial enforcement of the discriminatory covenant in this case.

We therefore respectfully urge that this Court affirm the decision of the court below, and reject the Petitioners' attempt to establish a judicial rule of law, under which private bigotry and prejudice would utilize governmental power to extend their ability to discriminate.

AMERICAN VETERANS COMMITTEE, INC.
Amicus Curiae

By PHINEAS INDRITZ,
National Counsel;
American Veterans Committee.

April 20, 1953.

Washington, D. C.